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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,941	04/30/2001	Michael G. Hayek	IAM 0618 PA	3312

7590

03/05/2002

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EXAMINER

BAHAR, MOJDEH

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 03/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/845,941

Applicant(s)

HAYEK ET AL.

Examiner

Mojdeh Bahar

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 6-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3-4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's response to the office action of 24 August 2001, submitted 3 January 2002 (Paper No. 5) is acknowledged.

Applicant's remarks, submitted 3 January 2002 is persuasive to remove all rejections under 35 U.S.C. 112 in the previous office action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinhart (EP 0678247 A1).

Reinhart (EP 0678247 A1) teaches a pet food (for animals including cats) composition comprising omega-6 and omega-3 fatty acids, wherein the ratio of said omega-6 fatty acids to said omega-3 fatty acids is from 3:1 to 10:1 (most preferably from 5:1 to 7.5:1), and wherein at least 15% of the total fatty acids in said composition are said omega-6 fatty acids and at least 3% of the total fatty acids in said composition are said omega-3 fatty acids see in particular claims 1-2, and 4. Reinhart (EP 0678247 A1) also teaches that omega-3 fatty acids are one or more compounds selected from the group consisting of eicosapentaenic acid and docosahexaenic acid and alpha-linolenic acid, and omega-6 fatty acids are one or more compounds selected from the group consisting of fish oil and flax, see claims 5 and 6 in particular. Reinhart (EP 0678247 A1) teaches that the percentage of crude fat is 20-23%, see page 3, line 41 in particular.



Reinhart (EP 0678247 A1) does not teach the percentage of fat in the composition to be between 7 and 14%.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ between 7 and 14% of fat in the composition of Reinhart.

One of ordinary skill in the art would have been motivated to employ between 7 and 14% of fat in the composition of Reinhart because the prior art amounts are similar to those herein and optimization of amounts is within the skill of the artisan and is therefore obvious.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pscherer et al. (WO 97/19683) in view of UC Berkley Wellness Letters (provided in the office action of 8/24/2001).

Pscherer et al. (WO 97/19683) teaches a lipid emulsion comprising from 35% to 65% by weight of the vegetable oils which supply omega-6 fatty acids and from 5% to 20% by weight of the fish oils which supply omega-3 fatty acids, claim 1 in particular. Pscherer et al. (WO 97/19683) also teaches that the predominant omega-6 fatty acid in the vegetable oils is alpha linolenic acid, page 1 line 36 to page 2 line 3, particularly. Pscherer et al. (WO 97/19683) also teaches that the predominant omega-3 fatty acids in fish oil are eicosapentaenic acid and docosahexaenic acid, page 2, lines 5-9.

Pscherer et al. (WO 97/19683) does not particularly teach flaxseed as a source of linolenic acid, or the particular amount of total fat recited herein.

UC Berkeley Wellness Letters teaches that flaxseed and flaxseed oil are by far the best source of alpha linolenic acid, see page 1.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ flax seed oil as the source of linolenic acid in the Pscherer composition.

One of ordinary skill in the art would have been motivated to employ flax seed oil as the source of linolenic acid because flaxseed oil is known to be by far the best source of alpha linolenic acid and would be reasonably expected to have the exhibit the similar characteristics as other plant oils whose predominant omega-6 fatty acid is linolenic acid.

Note that the recitation of intended use does not further limit a claim drawn to a composition.

Response to Arguments

Applicants' arguments regarding non-obviousness of the claims have been considered, but are not persuasive to remove the obviousness rejection in the previous office action.

Applicants first argue that Psherer et al. does not teach that the majority of omega-3 fatty acids comprise alpha-linolenic acid. Note that optimization of amounts is within the scope of the artisan and is therefore obvious. Moreover, omega-3 fatty acids, regardless of their source/origin would be expected to have similar therapeutic properties.

Applicants also argue that UC Berkeley Letters teaches that human body does not convert alpha linolenic acid into omega-3 fatty acids as fish oil. Note that the reference also teaches that "Alpha-linolenic acid is an omega-3 [fatty acid] similar to some of the fatty acids in fish oil." It is because of this similarity between Alpha-linolenic acid and fatty acids in fish oil that the Skilled Artisan would expect these fatty acids to have similar therapeutic effects.

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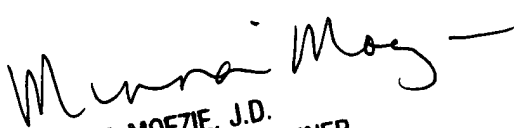
Applicants also argue that UC Berkeley does not teach the anti-inflammatory effects of linolenic acid or flaxseed oil. Note that the recitation of intended use does not further limit a claim drawn to a composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mojdeh Bahar whose telephone number is (703) 305-1007. The examiner can normally be reached on (703) 305-1007 from 8:30 a.m. to 6:30 p.m. Monday, Tuesday, Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Mojdeh Bahar
Patent Examiner
February 27, 2002


MINNA MOEZIE, J.D.
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